

ENTERED

March 13, 2023

Nathan Ochsner, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DEONDRE DYNELL DEBOEST, §
SPN #01774337, §
§
Petitioner, §
§
v. §
§ CIVIL ACTION NO. H-23-0710
HARRIS COUNTY SHERIFF §
ED GONZALES,¹ §
§
Respondent. §

MEMORANDUM OPINION AND ORDER

The petitioner, Deondre Dynell DeBoest, is presently confined as a pretrial detainee at the Harris County Jail. He has filed a Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241 ("Petition") (Docket Entry No. 4) to challenge criminal proceedings that are pending against him in Harris County. He has also filed an Application to Proceed Without Prepayment of Fees and Affidavit (Docket Entry No. 1). After considering all of the pleadings and the applicable law, the court will dismiss this action without prejudice for the reasons explained below.

¹The petitioner names State District Judge Josh Hill as the respondent (Docket Entry No. 4, p. 1). Because the petitioner is confined in the Harris County Jail, Sheriff Ed Gonzalez is substituted as the proper respondent under the rules governing federal habeas corpus review.

I. Background

DeBoest is currently in custody as the result of criminal charges that have been lodged against him in Harris County Case No. 1792110.² Public records from the Harris County District Clerk's Office confirm that DeBoest was indicted by a grand jury and charged with the felony offense of retaliation in that case, which is pending in the 232nd District Court of Harris County, Texas.³

In a Petition that is dated February 19, 2023,⁴ DeBoest contends that he is entitled to relief under 28 U.S.C. § 2241 because the trial court has appointed a criminal defense attorney to represent him, which DeBoest does not want.⁵ Deboest wishes to waive his right to counsel and represent himself with the assistance of stand-by counsel.⁶ DeBoest alleges that the trial court has refused to allow him to represent himself and has also failed to issue written rulings on motions that DeBoest has filed on his own behalf or to provide him with a copy of the offense

²Petition, Docket Entry No. 4, p. 2.

³See, Office of the Harris County District Clerk, available at: <https://www.hcdistrictclerk.com> (last visited March 10, 2023).

⁴Petition, Docket Entry No. 4, p. 8.

⁵Id. at 6.

⁶Id.

report so that he can prepare a defense.⁷ DeBoest asks this court to intervene and grant him leave to represent himself.⁸

II. DISCUSSION

The writ of habeas corpus provides a remedy only for prisoners who challenge the "fact or duration" of their confinement and seek "immediate release or a speedier release from that imprisonment." Preiser v. Rodriguez, 411 U.S. 475, 500, 93 S. Ct. 1827, 1841 (1973). To state a claim, a habeas petitioner must demonstrate that he is entitled to release from confinement because he is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c).

DeBoest does not seek release from confinement. Instead, he asks this court to intervene in ongoing state court criminal proceedings and overrule decisions made by the presiding judge. Principles of comity and federalism counsel against granting habeas relief in a criminal case that is pending trial in state court or issuing injunctive and declaratory relief concerning an ongoing state court criminal proceeding. See Kolski v. Watkins, 544 F.2d 762, 766 (5th Cir. 1977). Likewise, a federal court lacks the general power to issue writs of mandamus to direct state courts and their judicial officers in the performance of their duties. See 28

⁷Id.

⁸Id. at 7.

U.S.C. § 1361; Moye v. Clerk, DeKalb County Superior Court, 474 F.2d 1275, 1276 (5th Cir. 1973).

A federal district court may not intervene in criminal proceedings that are pending in state court unless exceptional circumstances are present. See Younger v. Harris, 91 S. Ct. 746, 750-51 (1971). Abstention is required under the Younger doctrine when "(1) the federal proceeding would interfere with an ongoing state judicial proceeding; (2) the state has an important interest in regulating the subject matter of the claim; and (3) the plaintiff has an adequate opportunity in the state proceedings to raise constitutional challenges." Bice v. Louisiana Public Defender Board, 677 F.3d 712, 716 (5th Cir. 2012) (citation and internal quotation marks omitted).

The court concludes that abstention is required because all three of the Younger criteria are satisfied. First, the pleadings reflect that DeBoest is the subject of an ongoing criminal prosecution in state court.⁹ Second, the State of Texas has an important interest in enforcing its own laws by pursuing criminal charges, which were lodged against DeBoest by a Harris County grand jury. See DeSpain v. Johnston, 731 F.2d 1171, 1176 (1984) ("The state has a strong interest in enforcing its criminal laws."). Third, DeBoest acknowledges that he has challenged the trial court's rulings in proceedings before the First Court of Appeals

⁹Petition, Docket Entry No. 4, p. 2.

and the Texas Court of Criminal Appeals.¹⁰ If convicted of the charges, DeBoest will also have an avenue to challenge the trial court's rulings further on direct appeal and collateral review under Article 11.07 of the Texas Code of Criminal Procedure. Under these circumstances, DeBoest's Petition will be dismissed without prejudice for lack of jurisdiction.

III. Certificate of Appealability

A certificate of appealability will not issue unless the petitioner makes "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), which requires a petitioner to demonstrate "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Tennard v. Dretke, 124 S. Ct. 2562, 2565 (2004) (quoting Slack v. McDaniel, 120 S. Ct. 1595, 1604 (2000)). Where denial of relief is based on procedural grounds the petitioner must show not only that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right," but also that they "would find it debatable whether the district court was correct in its procedural ruling." Slack, 120 S. Ct. at 1604. Because reasonable jurists would not debate whether the petitioner has established the requisite jurisdiction, a certificate of appealability will not issue.

¹⁰Id. at 2-3.

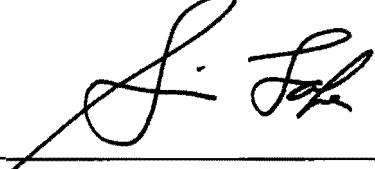
IV. Conclusion and Order

Based on the foregoing, the court **ORDERS** as follows:

1. The Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 filed by Deondre Dynell DeBoest (Docket Entry No. 4) is **DISMISSED without prejudice** for lack of jurisdiction.
2. A certificate of appealability is **DENIED**.
3. DeBoest's Application to Proceed Without Prepayment of Fees and Affidavit (Docket Entry No. 1) is **GRANTED**.

The Clerk shall provide a copy of this Memorandum Opinion and Order to the petitioner.

SIGNED at Houston, Texas, on this 13th day of March, 2023.



SIM LAKE
SENIOR UNITED STATES DISTRICT JUDGE